IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01-02-2006

CORAM

THE HONOURABLE MR. JUSTICE P.K.MISRA
AND
THE HONOURABLE MRS. JUSTICE CHITRA VENKATARAMAN

WRIT PETITION NO.4712 OF 2003

Dr.P.Subramanian,
No.16, Vijayaganapathy Nagar,
3rd Street, Ullagaram,
Chennai 600 091. .. Petitioner

Vs.

1. State of Tamil Nadu,
   rep. by its Secretary,
   Animal Husbandry and Fisheries
   Department, Fort St. George,
   Chennai 600 009.

2. The Director of Veterinary Services,
   Block II, Central Office Buildings,
   D.M.S. Complex, Chennai 600 006.

3. The Registrar,
   Tamil Nadu Administrative Tribunal,
   Chennai 600 104. .. Respondents

Petition filed under Article 226 of the Constitution of India for the issuance of writ of certiorarified Mandamus to call for the records on the file of the third respondent pertaining to the order passed by the third respondent Tribunal in O,.A.No.898 of 2001 dated 30.4.2002 and quash the same and consequently issue a direction directing the respondents 1 and 2 to give notional promotion to the petitioner as Deputy Director, Animal Husbandry and Fisheries Department from 31.5.1999 and notional promotion as Joint Director in Animal Husbandry Department from 14.4.2000 with all monetary and attendant benefits.

For Petitioners : Mr.R.Viduthalai for
M/s.A.V.Bharathi &
J.Gayathri

For Respondents 1-2 : Mr.S.Gomathy Nayagam
Special Govt.Pleader (Writ)

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J U D G M E N T

P.K. MISRA, J

The facts giving rise to the present writ petition are as follows :-

The petitioner joined services as Veterinary Assistant Surgeon under the Government of Tamil Nadu in the Animal Husbandry Department during the year 1967. Subsequently, by G.O.Ms.No.124 Agriculture Department dated 30.1.1975, he was deputed to Tamil Nadu Dairy Development Corporation for two years with retrospective effect from 1.2.1974. Such Department was subsequently renamed as Tamil Nadu Milk Producers Federation. From time to time, his deputation was being extended. On 22.1.1980, he was awarded Selection Grade in Veterinary Asst. Surgeon with effect from 1.10.1978. Subsequently, as per G.O.Ms.No.192 dated 8.11.1983, options were called from the deputationists for permanent absorption in Tamil Nadu Milk Producers Federation and even though the petitioner exercised such option on 29.6.1984 for permanent absorption, no order was ever passed formally absorbing him in the Tamil Nadu Milk Producers Federation. On the other hand, the petitioner, while he was still under deputation, was promoted as Assistant Director in his parent Department as per order dated 15.6.1990. On 19.9.1990, the petitioner withdrew the option given by him on 29.6.1984. Subsequently, the promotion of the petitioner as Asst. Director was formally communicated on 22.1.1991 and yet the petitioner continued to serve in the Tamil Nadu Milk Producers Federation. On 14.11.1997, the Federation took a formal decision to repatriate all those who had come on deputation if the parent department was willing to take them back. In the meantime, since the petitioner's junior in the parent department had been promoted, the petitioner had written letter dated 5.5.1999 seeking for promotion. On 31.5.1999, the juniors to the petitioner in the parent department were included in the list of Deputy Directors and one junior was further promoted as Joint Director on 19.4.2000. Thereafter, the petitioner was reverted to the parent department by G.O.Ms.No.126 dated 4.8.2000 and joined as Asst. Director on 31.8.2000. The petitioner had made representation to include his name in the panel for the Deputy Director and then as the Joint Director. Since the petitioner was due to retire on 30.6.2001 and no orders had been passed on the representation dated 18.12.2000, the petitioner filed O.A.No.898 of 2001 before the Tamil Nadu Administrative Tribunal seeking for a direction to the respondents to include

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the name of the petitioner in the panel of Deputy Director and Joint Director as his juniors had been promoted. However, under the impugned order dated 30.4.2002, such O.A. was dismissed. The present writ petition is directed against the aforesaid order of the Administrative Tribunal.

2. The Tribunal came to the conclusion that since the petitioner had given his option to be permanently absorbed in the Tamil Nadu Milk Producers Federation, he cannot modify such option at a subsequent date. It was further concluded by the Tribunal that though the applicant was given promotion by the parent department in the year 1990 and thereafter he continued under the foreign employment occupying high post drawing higher scale of pay and when his junior had been promoted and included in the panel in the year 1999, the applicant has not chosen to challenge the order "perhaps for the reason that he was continuing under the foreign employer in a higher position. He has chosen to claim promotion to the post of Deputy Director or Joint Director only after his reversion to the parent department in the year 2000." It was further concluded that the special rules relating to Animal Husbandry Department indicated that to become eligible for promotion as Deputy Director, one should have put in 10 years of service in Animal Husbandry Department and the applicant had on the whole put in less than 10 years of service in the Animal Husbandry Department and, therefore, he was not eligible for the promotion as per the special rules.

3. Learned counsel appearing for the petitioner has submitted that since no specific order has been passed absorbing the petitioner in the foreign department and the petitioner had in fact given promotion in the parent department after such option had been given by the petitioner, the conclusion of the Tribunal that the option of the petitioner was irrevocable cannot be sustained in law.

4. The learned Special Govt. Pleader has supported the conclusion of the Tribunal.

5. After hearing the learned counsels appearing for the parties at length and after going through the entire materials on record, we are inclined to accept such submission made by the learned counsel for the petitioner. It is no doubt true that the petitioner had given option in the year 1984 for being permanently absorbed in the Tamil Nadu Milk Producers Federation. However, there was no order absorbing him in the Federation and on the other hand it is apparent that the petitioner continued to retain his lien in the parent department as evident from the fact that he was given promotion

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as Asst. Director in the parent Department. As a matter of fact such order relating to promotion was communicated to the petitioner only after he had withdrawn his option given on 29.6.1984 by letter dated 19.9.1990. In such circumstances, it cannot be said that the petitioner had no right to withdraw his option to be absorbed permanently in the foreign department. The rule to the effect that such option once given cannot be modified can only be construed to mean that once such option for absorption in the foreign department is accepted by the foreign department by making such deputationist a permanent employee, thereafter such option cannot be withdrawn. On the other hand, by applying the ordinary principles of law relating to contract, it can be held that the option given by the petitioner can be withdrawn by him before such option is accepted and acted upon by the authority to whom such option is given.

6. Apart from the fact that the petitioner had been promoted as Asst. Director in the parent department during the year 1990-91, the Tamil Nadu Milk Producers Federation itself had taken a decision subsequently to permit the petitioner and other similarly placed deputationists to go back to their parent department provided their Department was willing to take them back. Thereafter, it is obvious that because of the usual administrative red-tapism, the actual reversion of the petitioner could take place only in the month of August, 2000. In the meantime the petitioner had been representing about promotion in the parent department and it cannot be said that he had willingly and knowingly acquiesced in the promotion of his juniors in the parent department because he was allegedly drawing higher salary in the foreign department. If the logic adopted by the Tribunal would be accepted, the petitioner would be left in lurch as he has not been given promotion in the foreign department and he would be now deprived promotion in the parent department and his position would be like that of proverbial "Trishanku".

7. In view of the aforesaid conclusion, in normal course, we would have directed the respondents in the Animal Husbandry and Fisheries Department to consider the question of promotion of the petitioner to the post of Deputy Director and Joint Director of Animal Husbandry Department from the date on which his immediate junior in the parent department had been promoted. However, we find that the petitioner has retired from 30.6.2001 and as fairly submitted by the learned counsel for the petitioner he may not be entitled to any enhanced salary in the promotional post but would be entitled only to notional benefits so that he can draw pension on such basis.

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8. Having regard to all these aspects, in order to avoid any further delay, we direct that the petitioner shall be deemed to have been promoted as Deputy Director and Joint Director with effect from the date on which his immediate junior, namely, Dr.R. Xavier, was promoted. However, no financial benefits would be available to him till the date of his retirement and his pay in the promotional post including increment would be notionally calculated for the purpose of granting pension. This direction shall be carried out within a period of three months from the date of receipt of the order. The revised pension, including arrears towards revised pension, shall be paid within a period of four months from the date of receipt of the order.

9. Subject to the above directions, the writ petition is allowed. No costs.

dpk

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

1. State of Tamil Nadu,
   rep. by its Secretary,
   Animal Husbandry and Fisheries
   Department, Fort St. George,
   Chennai 600 009.

2. The Director of Veterinary Services,
   Block II, Central Office Buildings,
   D.M.S. Complex, Chennai 600 006.

3. The Registrar,
   Tamil Nadu Administrative Tribunal,
   Chennai 600 104.

+ one cc to Mr.A.V.Bharathi, Advocate Sr.No.4153
+ one cc the Government Pleader, High Court, Madras Sr.No.4476

LA (CO)
RSM/7.2.2006

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